From: Chad Redman
To: Microsoft ATR
Date: 1/25/02 5:38pm
Subject: Microsoft Settlement

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Dear Sirs,

I would like to add my voice to those who are against the lenient terms of this settlement. For a reasonable non-sociopathic business, one would expect that once they had agreed to the terms, they would follow its intent. But it is clear from past behavior that Microsoft will find any feasible loophole, and barring that, will violate the terms outright. It has shown this not only by **violating a previous consent decree**, but by bundling even more software with its latest operating system, and rushing it out to vendors before the DoJ could restrain it.

Most of the specific arguments against the proposal have been expressed more elegantly by Dan Kegel (http://www.kegel.com/remedy/remedy2.html). Although the potential loopholes I point out below may sound absurd, Microsoft has demonstrated that it does not shy from "creative" legal interpretations.

From: III. Prohibited Conduct
(sec. A)
>...Microsoft shall not terminate a Covered OEM's license for a Windows
>Operating System Product without having first given the Covered OEM
>written notice of the reasons for the proposed termination and not
>less than thirty days' opportunity to cure....

Nothing requires that Microsoft's reason be valid. A trumped up complaint could be issued, possibly one which the OEM cannot comply with. After 30 days, the OEM is not licensed.

(sec. D)
>...Microsoft shall disclose to ISVs, IHVs, IAPs, ICPs, and OEMs, for the
>sole purpose of interoperating with a Windows Operating System Product,
>via the Microsoft Developer Network ("MSDN") or similar mechanisms, the
>APIs and related Documentation...

The groups listed are a subset of all possible users. Can MS exclude anyone from joining MSDN? And what is the cost of joining. For programmers creating cost-free software, is the subscription price prohibitive? Is someone with access constrained from sharing it with others who are not members? Are users constrained in any way in the use of the APIs, such as in creating software under the Free Software Foundations GPL, or in an open source project, such as Linux or Wine, both MS competitors.

>... the disclosures required by this Section III.D shall occur no later
>than the last major beta test release of that Microsoft Middleware. In the
>case of a new version of a Windows Operating System Product, the
>obligations imposed by this Section III.D shall occur in a Timely Manner.

Meanwhile, all MS project teams can access the APIs at any time earlier than this, which it can use to get ahead of competing products. This is why the term "Chinese wall" gets invoked a lot, and why the proposed remedy was to split the company into OS and software companies.

(III.J.2)
>c. meets reasonable, objective standards established by Microsoft for
>certifying the authenticity and viability of its business

Microsoft may argue that cost-free or open source software creators are not viable businesses. In fact, they have publicly stated as much already.

IV.B.3
>Within 7 days of entry of this Final Judgment, the Plaintiffs as a group
>and Microsoft shall each select one member of the TC, and those two
>members shall then select the third member.

I don't know why MS needs to be involved in this. The TC members are to assist the plaintiffs in the enforcement that the judgment grants them. The Plaintiffs should be able to choose whomever they feel would do the best

job at assisting them, hostile to MS or not, as long as their oversight
does not violate privacy protections this document grants to MS. How would
an MS-chosen TC be helpful to the Plaintiffs?

(V)
>   1. Unless this Court grants an extension, this Final Judgment will
> expire on the fifth anniversary of the date it is entered by the Court.

5 years is not enough.

>   2. In any enforcement proceeding in which the Court has found that
> Microsoft has engaged in a pattern of willful and systematic violations,
> the Plaintiffs may apply to the Court for a one-time extension of this
> Final Judgment of up to two years, together with such other relief as the
> Court may deem appropriate

7 years is not enough.

(VI)
>B.   "Communications Protocol" means the set of rules for information
>exchange to accomplish predefined tasks between a Windows Operating System
>Product and a server operating system product connected via a network,
>including, but not limited to, a local area network, a wide area network
>or the Internet. These rules govern the format, semantics, timing,
>sequencing, and error control of messages exchanged over a network.

It should also include MS server products; I.e., tasks between a Microsoft
Product and a *client* operating system product. This would include the
hypothetical case where an MS online service "embraces and extends"
existing internet protocols. Really, this definition should just define it
as information exchange between two machines or applications, independent
of where the machines are or whose OS is on them.

>I.   "ISV" means an entity other than Microsoft that is engaged in the
>development or marketing of software products.

I presume the V in ISV stands for vendor. If someone creates a product that
he gives away for free instead of sell, is he still an ISV

>J.   "Microsoft Middleware" means software code that
>   ... 2. is Trademarked;

Software code may be copyrighted, not trademarked. I would think this means
software product, not code. Oddly, definition (K) does defines "Microsoft
Middleware Product" separately, but as a rather narrow set of products.

>P.   "Operating System" means the software code that, inter alia, (i)
>controls the allocation and usage of hardware resources (such as the
>microprocessor and various peripheral devices) of a Personal Computer,
>(ii) provides a platform for developing applications by exposing
>functionality to ISVs through APIs, and (iii) supplies a user interface
>that enables users to access functionality of the operating system and in
>which they can run applications.

Does this mean that MS does not consider a web browser, MSN services, links
to MS's preferred online photo developers, or Minesweeper part of the
operating system?

>Q.   "Personal Computer" means any computer configured so that its primary
>purpose is for use by one person at a time, that uses a video display and
>keyboard (whether or not that video display and keyboard is included) and
>that contains an Intel x86 compatible (or successor) microprocessor.
>Servers, television set top boxes, handheld computers, game consoles,
>telephones, pagers, and personal digital assistants are examples of
>products that are not Personal Computers within the meaning of this definition.

It is significant that this does not cover server computers such as web servers, and excludes handheld computers or PDAs. And what's the difference between these last two?

>R. "Timely Manner" means at the time Microsoft first releases a beta test
>version of a Windows Operating System Product that is distributed to
>150,000 or more beta testers.

Why is it important that MS be allowed to withhold information until that point? Surely, anyone can benefit from the information, even if it is subject to change.

>U. "Windows Operating System Product" means the software code (as opposed
>to source code) distributed commercially by Microsoft for use with
>Personal Computers as Windows 2000 Professional, Windows XP Home, Windows
>XP Professional, and successors to the foregoing, including the Personal
>Computer versions of the products currently code named "Longhorn" and
>"Blackcomb" and their successors, including upgrades, bug fixes, service
>packs, etc. The software code that comprises a Windows Operating System
>Product shall be determined by Microsoft in its sole discretion.

The acts this judgment remedies were taken by Microsoft the Corporation. Therefore, all MS products should be covered, not just this very limited group.

In addition to the above specific criticisms, I would like to see protections for freely available operating systems (e.g., Linux) and open source software at least mentioned in the judgment. MS has targeted Linux and open source software as its current primary threats, and will use any tactic within its disposable to extinguish these competitors. For example, a new MS practice is to construct licenses (whether or not for a product covered by the judgment) that specify that the user cannot use a product to create "viral" software, which is specifically targeted at open source software covered by the Free Software Foundation's GPL (MS does or did have such a license for one of its handheld product developer kits).

Thank you for your consideration,

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